



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Approving authority name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20 – 80 – 10 et seq.
Regulation title	Virginia Solid Waste Management Regulations
Action title	Amendment 5
Document preparation date	July 20, 2005

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this amendment of the Virginia Solid Waste Management Regulations is to address the following:

- Exemptions and exclusions;
- Open burning;
- Public involvement;
- Research, development and demonstration permits;
- Waste intake rates;
- Notification of the Department of Environmental Quality (department) with respect to local meetings regarding waste;
- Odors and landfill gas;
- Leachate management;
- Bird hazards and military airports;
- Landfill location with respect to water supplies and wetlands;
- Major and minor amendments in table 7.4;
- Timeframe for Part A completeness reviews;
- Waste management plan clarification;

- Landfill reactivation;
- Background groundwater constituent data during Part A application;
- Safety program;
- Permit-by-rule (PBR) facilities compliance with operations plans;
- Clarification of closure timeframes;
- Denial procedures; and
- Definitions.

The need for the amended regulation is to coordinate waste management practices with other agencies and other programs, and to address issues and questions that have arisen since these sections of the regulations were last modified. The goal is to make the regulations clear and enforceable and to protect human health and the environment.

Legal Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

40 CFR Part 258 provides the federal authority for the criteria for municipal solid waste landfills. The web site address for Part 258 is:

<http://www.epa.gov/epahome/rules.html#codified>

The presently proposed amendment deals with the portions of the regulations that are affected by the federal requirements and are subject to the federal program approval. Therefore, the state regulations are more restrictive than the federal regulations. Provisions dealing with the siting of sanitary landfills adjacent to Airports currently only apply to public use airports. These siting restrictions will also be extended to the siting of landfills or transfer stations adjacent to military airports as well. Hazards from bird strikes exist for both civilian and military aircraft.

The Virginia Waste Management Act authorizes the Virginia Waste Management Board (board) to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. Article 2 of the Act prohibits the ownership or operation of an open dump, which is defined in §10.1-1400 to be any:

...site on which solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into environment or present a hazard to human health.

The Act further prohibits any person from operating a facility for the disposal, treatment, or storage of non-hazardous solid waste without a permit from the director of the department (§10.1-1408.1 A). The Act requires the permit to contain such conditions or requirements that would prevent a substantial present or potential danger to human health and the environment (§10.1-1408.1 E). Virginia Code §10.1-1402 (1) and (11) state:

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth...

11. *Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.*

The Virginia Waste Management Act is codified as chapter 14 sections 10.1-1400 through 10.1-1457 of the 1950 Code of Virginia, as amended. The web site address for the full text is:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC100100001400000000000>

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Exemptions and Exclusions

Updates to exemptions and exclusions are needed to address coordination of waste management programs with other agencies and other programs within the department. In addition, exemptions and exclusions are used when waste management activities are identified that should occur without permits, but still require regulatory language to delineate the circumstances associated with the waste management activity that afford adequate environmental protection.

Open burning

Air regulations and waste regulations related to open burning must be coordinated. In addition, although the current regulations exempt certain types of open burning from being subject to open dump requirements, these activities must also be exempted from permitting requirements. Exemptions from permitting requirements for open burning consistent with the applicable air regulations and open dump exemptions will be provided.

Public involvement

Modifications are required to make the practices for holding public hearings associated with waste management facility permits more consistent with the Code of Virginia.

Localities will be required to provide the department with a notification of any public meetings or hearings associated with waste management issues and facilities. This notification will allow the department to keep the public informed of hearings associated with waste management facilities. This will allow the public to use the department for a resource for information regarding these local hearings and meetings in addition to those meetings and hearings associated with department actions on waste facility permits and variances.

Research, development and demonstration (RDD) permits

The EPA allows research, development and demonstration (RDD) permits for certain practices at landfills. RDD permits are allowed for new municipal solid waste landfill (MSWLF) units, existing MSWLF units, or lateral expansions, for which the owner or operator proposes to utilize new and innovative methods to control run-on to active portions of the landfill, to manage liquids at the landfill and to provide for an adequate landfill cap. The regulations will be modified to recognize allowable RDD activities.

Waste intake rates

Landfills are designed to receive a certain amount of waste per day. Design and operational elements function effectively at appropriate design volumes and become ineffective when waste above the design volume is received. Waste acceptance rates will be specified with respect to the facility permit based on the design of the facility as well as for other considerations.

Odors and landfill gas

Gas management requirements will be modified to address all aspects of gas management including the design and operation of both gas monitoring and gas management systems. In addition, odor resulting from landfill gas, the response to odor and the management of odor will be addressed.

Leachate management

Leachate management requirements will be modified to address the elements of leachate system design and operation. In addition, language will be introduced which specifically prohibits leachate outbreaks. Requirements will be specified for the response to unauthorized leachate discharges to the land surface, groundwater or surface water.

Bird hazards and military airports

Provisions will be added to the regulations restricting the location of sanitary landfills and transfer stations adjacent to military airports.

Landfill location with respect to water supplies and wetlands

The regulations will be updated to address the landfill siting restrictions adjacent to public water supplies and wetlands passed during this year's legislative session.

Major and minor amendments in table 7.4

Major amendments will be provided/clarified for increases in the daily waste intake rate at landfills and for capacity (volume) increases at landfills.

Timeframe for Part A completeness reviews

Completeness reviews for Part A permit applications must be done in 15 days under current regulations. The last two amendments of the regulations added additional provisions to the regulations that require additional time for review. The timeframe will be changed to 30 days for Part A completeness reviews.

Waste management plan

Clarify that a facility must be included in a final approved local or regional solid waste management plan.

Landfill reactivation

Clarify the circumstances that would preclude reopening a closed or inactive landfill.

Background groundwater data

Establish background data for constituents in groundwater prior to beginning the Part B application in order to identify any sources that may be present in the vicinity of the site that may be contributing to groundwater contamination.

Safety Program

Clarify the content of an active safety program for a waste management facility.

Permit-by-rule facilities compliance with operations plans

Clarify PBR facilities are required to comply with the facility operations plan.

Permit issuance

9 VAC 20-80-500 E 4 discusses a "final" decision by the director related to permit denial. A final decision for permit denial is rendered after appropriate hearings, not at the time indicated in this section. Therefore, the word final will be removed from this section of the regulations.

Clarifications of closure timeframes

Provide a clarification of closure notifications and scope.

Definitions

The definition for “vertical design capacity” will be revised. Any other definitions associated with the modifications above will be revised as necessary.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Exemptions and Exclusions

Updating and clarifying exemptions and exclusions from the regulations in sections 9 VAC 20-80-

- 60 Exemptions for landfill expansion – Clarify under what circumstances landfills are not eligible to expand without a permit amendment.
- 60 E Conditional exemptions - Includes waste management practices that do not create an open dump, hazard or nuisance.
- 150 Exclusions - Includes materials not solid wastes
- 160A Conditional exemptions - Includes wastes when managed consistent with other agencies
- 160B Conditional exemptions - Includes fossil fuel combustion products
- 160C Conditional exemptions - Includes solid wastes when managed not to create an open dump, hazard or nuisance, and are not speculatively accumulated

Provide exemptions and exclusions including, but not limited to the following:

- Open burning consistent with 9 VAC 20-80-180 B 7 and coordinate open burning requirements with the department’s Air Pollution Control Program
- Wood burned for energy recovery
- Management of animal carcasses
- Management of waste at a centralized waste treatment (CWT) facility operating under the provisions of 9 VAC 25-31-30, which incorporates the provisions of 40 CFR Part 437 by reference
- The beneficial use of slag, foundry sand and coal combustion by products as applicable
- Autoclaves and incinerators that treat waste other than regulated medical waste at clinics and agricultural operations

Provisions for More Effective Public Involvement

Require public hearings for new facilities and for expansions and capacity increases consistent with §10.1-1408.1 D 1 of the Code of Virginia. For other permit modifications/amendments, provide a public comment period and opportunity for comment but no public hearing unless determined to be necessary by the director.

Require notification to the department for any local hearings (such as zoning hearings) addressing solid waste management facilities. This will allow the department to include this information on the department's webpage, which will facilitate earlier public involvement.

RDD Provisions

Consistent with the federal requirements contained in 40 CFR Part 258.4, the regulations will be updated to provide for a RDD permit for new MSWLF units, existing MSWLF units, or lateral expansions, for which the owner or operator proposes to utilize innovative and new methods to control run-on to active portions of the landfill, to manage liquids at the landfill or to provide for an adequate landfill cap. The provisions for special permit types in 9 VAC 20-80-485 will be expanded to address the RDD permit provisions.

Daily Waste Intake

The regulations will be updated to require average and maximum daily waste acceptance rates to be specified in the facility permit. The waste acceptance rate will be based on the design of the facility including but not limited to infrastructure such as scales, internal roadways, truck queuing areas, equipment, daily cover materials, working face size, lift height. The waste inspection capability will be considered when specifying acceptance rates. The director may also consider the need for disposal capacity when determining the waste intake rate as provided in §10.1-1408.1 D 1 of the Code of Virginia.

9 VAC 20-80-280 Control of Decomposition Gases

Provisions regarding decomposition gas, including gas monitoring, control, and new provisions and odor control will be addressed. Modifications to landfill design and operation to control odor and manage gas will be considered in 9 VAC 20-80-250 B and C, 260 B and C, and 270 B and C.

9 VAC 20-80-290 Leachate Control System and Monitoring

Update provisions addressing response to leachate outbreaks and state in the operations section 9 VAC 20-80-250, 260 and 270 that they are not allowed. In addition, the revision of leachate control and monitoring in 9 VAC 20-80-290 will be considered.

Bird Hazard for Landfills and Transfer Stations

Consider bird hazards resulting from the operation of sanitary landfills and transfer stations managing municipal solid waste and other putrescible waste. Facilities and their location adjacent to military airports will be addressed in the siting provisions of 9 VAC 20-80-250 A and 9 VAC 20-80-340 B.

House Bill 2192

Modifications to §10.1-1408.4 and §10.1-1408.5 of the Code of Virginia during this year's legislative session will require corresponding updates addressing sanitary landfill siting, design and groundwater monitoring requirements in the VSWMR. 9 VAC 20-80-250 A siting provisions, 9 VAC 20-80-250 B landfill design requirements and 9 VAC 20-80-300 B groundwater requirements will be updated to accommodate the changes to legislation. These changes are related to landfill siting adjacent to wetlands and water supplies.

Major/Minor Modifications (Table 7.4)

Major amendments will be required to increase the waste intake rate and increases to facility capacity (volume).

Part A

Revise 9 VAC 20-80-500 C2 to allow completeness review in 30 days rather than 15 days as currently required. Due to modifications to the scope of the Part A application in recent years, 15 days does not allow enough time for the review.

Waste management plan

Revise 9 VAC 20-80-510 so it is clear that a final approved local or regional solid waste management plan is needed which clearly identifies the facility as part of the local or regional waste management strategy.

Landfill reactivation

Clarify the circumstances that would preclude reactivation of a closed or inactive landfill. These circumstances include, but are not limited to, if an area is unlined, if closure is as a result of a scheduled closure established under §10.1-1413.1, or if an area has previously undergone closure.

Background groundwater data

Establish background data for constituents in groundwater prior to beginning the Part B application in order to identify any sources that may be present in the vicinity of the site that may be contributing to groundwater contamination.

Safety program

Clarify the content of an active safety program required under landfill operation requirements. Examine if safety programs should be required for other types of facilities.

Permit-by-rule facilities compliance with operations plans

Clarify PBR facilities are required to comply with the facility operations plan.

Permit Denial

Remove the word “final” in 9 VAC 20-80 500 E 4 since the denial process under the Virginia Administrative Process Act, Va. Code §2.2-4000, et seq., is required for the final decision regarding the denial of a permit.

Clarifications of closure timeframes

Provide a clarification of closure notifications and scope. Clarify timeframes for preparing plans and certifications for facility closure. Clarify the difference between the closure of an area, cell, or unit, and the closure of the facility.

Definitions

The definition for “vertical design capacity” contained in 9 VAC 20-80-10 will be revised. The definition provided in 9 VAC 20-80-10 will specify that the closure elevation in the facility’s approved closure plan can also define the vertical design capacity of the facility.

Any other definitions associated with the modifications specified above will be revised as necessary. Changes to other sections of the regulations to accommodate the modifications outlined above.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

Text will be provided to the technical advisory committee (TAC) for discussion. Alternatives will be considered that are presented during TAC meetings or during the public comment periods for the regulation that accomplish the goals of the amendment.

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a public meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this notice or other alternatives and 3) impacts of the regulation on farm and forest land preservation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail, email or fax to Michael J. Dieter, Virginia Department of Environmental Quality, P.O. Box 10009, Richmond, VA. 23240, Ph: (804) 698-4146, Fax: (804) 698-4327 and mjdieter@deg.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period. Specifically, persons who want to be on the ad hoc advisory group should notify Michael Dieter in writing by 5:00 p.m., the last day of the comment period and provide their name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. Any persons who want to be in the advisory group are encouraged to attend the public meeting mentioned above. The primary function of the group is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulations protect the public's health, safety and welfare and the environment from harmful results of the mismanagement of solid wastes. However, Amendment 5 of the Virginia Solid Waste Management Regulations has no direct impact on the institution of the family.